

To: McWhirter, Lisa[McWhirter.Lisa@epa.gov]
From: Connors, Kevin C.
Sent: Thur 6/19/2014 8:36:18 PM
Subject: RE: Question on History of CCS in North Dakota

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Lisa,

In early 2008, at the request of the North Dakota Industrial Commission (comprised of the Governor, Attorney General, and Agriculture Commissioner), a task force was formed to develop a regulatory framework for the long-term storage of carbon dioxide and to address ownership of the pore space in geologic strata. The task force, known as the North Dakota Carbon Dioxide Storage Workgroup was made up of representatives of the State's major industrial sectors (coal mining, electric generation and transmission, and oil and natural gas), the trade associations for each industry, the University of North Dakota Energy & Environmental Research Center, the State Health Department, the State Mineral Resources Department, and the Office of the Attorney General. Based upon the recommendations of the task force, the Industrial Commission, in advance of the 2009 legislative session, pre - filed two bills. Senate Bill (SB) 2095 covered geologic storage of carbon dioxide and granted regulatory authority to the Industrial Commission. SB 2139 covered subsurface pore space and awarded title to the underlying pore space to the owner of the overlying surface estate. Both bills were subsequently passed into law and signed by Governor Hoeven on April 8, 2009. The bills became effective July 1, 2009, and April 9, 2009, respectively.

Following the establishment of laws governing the geologic storage of carbon dioxide in North Dakota the workgroup set out to develop administrative rules. The North Dakota Department of Mineral Resources, Oil and Gas Division issued a proposed set of regulations on September 10, 2009, as part of a broader set of administrative rule changes. A public hearing was held on October 15, 2009, and based upon comments received; changes were made in the rules. On November 16, 2009, the Industrial Commission gave its final approval to the regulations. On December 4, 2009, the Attorney General certified that statutory requirements for approval of the regulations by the Industrial Commission had been met. After being sent to the Administrative Rules Committee, a joint committee of the North Dakota House and Senate, the regulations became final on April 1, 2010, when no action was taken by the committee. This led to North Dakota becoming the first State in North America with a complete and comprehensive legal and regulatory framework for the geologic storage of carbon dioxide.

In response to the USEPA Class VI Rule, and at the request of the Industrial Commission, the sixty-second Legislative Assembly of North Dakota appropriated funds from the State's general fund to the Carbon Dioxide Storage Facility Administrative Fund. The Industrial Commission was then able to utilize these funds to provide a timely response to the USEPA Class VI Rule by developing a coordinated response from State agencies with the goal of the State of North Dakota having Class VI primacy for carbon dioxide storage in North Dakota. In 2011 the North Dakota Carbon Dioxide Storage

Workgroup reconvened to amend its previous work on the State administrative rules in an effort to meet the stringency of the federal Class VI Rule. The North Dakota Department of Mineral Resources, Oil and Gas Division issued a proposed set of new rules and amendments to existing rules on March 27, 2012. A public hearing was held on April 24, 2012, and based on comments received; the public comment period was extended from 10 days to 45 days. During the extended comment period the Department of Mineral Resources was informed by USEPA that additional changes to the proposed rule were needed in order to meet the stringency of the federal UIC program. On September 18, 2012 the North Dakota Department of Mineral Resources, Oil and Gas Division reissued the proposed rule with additional changes required to meet federal stringency standards. A second public hearing was held on October 22, 2012 and a second public comment period ensued. On November 19, 2012 the Industrial Commission gave its final approval to the regulations. On January 22, 2013 the Attorney General certified that statutory requirements for approval of the regulations by the Industrial Commission had been met. After being sent to the Administrative Rules Committee the regulations became final on April 1, 2013, when no action was taken by the committee.

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From: McWhirter, Lisa [mailto:McWhirter.Lisa@epa.gov]

Sent: Thursday, June 19, 2014 12:38 PM

To: Connors, Kevin C.

Cc: Boomgaard, Craig

Subject: Question on History of CCS in North Dakota

Hi Kevin,

In preparing for the briefing with our Office Director (Peter Grevatt), a question came up on when North Dakota first had legislation to create a CCS program. I believe North Dakota already had statutes and/or regulations for CCS activities prior to the Class VI (GS Rule) was published in 2010. This will just provide background information and show that ND has been thinking about permitting GS activities for however many years. Will help us show that this primacy rule is important and have the rules signed hopefully more quickly.

Thanks,

Lisa

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